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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,920	11/01/2001	Adeyinka Adedeji	08CN06025-2	3492

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CANTOR COLBURN, LLP
55 GRIFFIN ROAD SOUTH
BLOOMFIELD, CT 06002

EXAMINER

MULLIS, JEFFREY C

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 01/13/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

A97

Office Action Summary

Application No.

09/682,920

Applicant(s)

ADEDEJI ET AL.

Examiner

Jeffrey C. Mullis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2-6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Applicants' specification is objected to since the product of claims 42 and 43 is not described in the specification in that the specification indicates that a cyclic anhydride grafted polyolefin is necessary in applicants' composition. It is noted that claims 42 and 43 are not so limited. Note that paragraph 54 of applicants' specification discloses that the polypropylene-polystyrene graft copolymer is an optional component. Therefore applicants should insert the disclosure of claims 42 and 43 into the instant specification or else limit claims 42 and 43 such that they require a polyolefin-graft-cyclic anhydride copolymer in addition to the other materials of claims 42 and 43.

Claims 44-47 are rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification as filed does not disclose a "reaction product" of the various materials recited in claims 44-47 and does not disclose how to make such a reaction product.

Claims 3, 13 and 33-36 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

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It is not clear what a "C alkyl or phenyl" is since this phrase is not art recognized.

At least claim 13 is unclear since claim 13 recites the term "naphthyl group including" just prior to "(B)" since it is not stated what "including" refers to.

At least claim 33 is unclear since the "ethylene/alphaolefin elastomeric copolymer" is embraced by the polyolefin of claim 1 and it is therefore unclear if the ethylene/alphaolefin elastomeric copolymer is a material in addition to the polyolefin.

Claim 36 is unclear since the hydrogenated block copolymer referred to may embrace the block copolymer of claim 1 in that claim 1 recites a lower limit of alkenyl aromatic content of about 40% while that of claim 36 recites an upper level of 40% and thus it cannot be determined if a single hydrogenated block material could meet the limitation of claim 36 when claim 36 contained for instance 39% vinyl aromatic monomer.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-17, 19-25, 33-39, 41 and 44 are rejected under 35 U.S.C. § 102(b) as being anticipated by Chino et al. (USP 6,031,049).

Note "production Example 2" at column 13 lines 32-49 for maleic anhydride grafted SPS as in applicants' "polyolefin-graft-cyclic anhydride copolymer" as well as applicants' polyalkenyl aromatic resin. Note the Abstract which indicates that the patent composition requires 10-98% SPS, 2-90% polyolefin, 0.5-50 parts styrene block copolymer containing 40-85% styrene and 0.5-10 parts polyphenylene ether. Note Table 2-15 for examples and comparative examples using the graft of production Example 2 in combination with glass fiber filler.

Claims 1-47 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Furuta et al. (EP 0412787).

Furuta et al. disclose a composition containing polystyrene at page 5 lines 10-11 in combination with polyphenyl ether at

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page 5 lines 24-26 in combination with polystyrene grafted polypropylene at page 5 lines 27-30 to which may be added filler if desired at page 9 lines 20-22. Note that the grafting monomer polystyrene may be combined with maleic anhydride comonomer for grafting at page 6 lines 17-20. Note that patentees specifically disclose an example in which the block copolymer has more than 40% by weight styrene at page 14 lines 12-17 and furthermore utilizes a block copolymer made by Japan Synthetic Rubber Co. referred to as TR-2000 in the footnote to Table 2 on page 18, known to have 40% by weight styrene.

No specific examples are disclosed in which all of applicants' limitations are present although examples are provided in which all limitations are met except that no filler is present.

It would have been obvious to a practitioner having ordinary skill in the art at the time of the invention to add filler to the Examples of Furuta et al. since Furuta et al. specifically discloses that filler may be added absent any showing of surprising or unexpected results and furthermore even had the Examples not existed, the choice of applicants' materials from those of Furuta would have been obvious to a practitioner having ordinary skill in the art at the time of the invention since Furuta et al. specifically discloses that such materials may be used absent any showing of surprising or unexpected results.

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Note that Yamauchi et al. (USP 4,764,559), cited by applicants discloses at column 8 lines 45-50 that TR-2000 has a styrene content of 40%.

The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ 2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-47 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 16, 17, 25 and 35 of copending application Serial No. 09/682,926. Although the conflicting claims are not identical, they are not patentably distinct from each other because the term "glass fibers" as recited in the '926 application is embraced by applicants' term "fillers" and also choice of percentages would have been obvious to a practitioner having ordinary skill in the art at the time of the invention absent any showing of surprising or unexpected results.

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This is a *provisional* obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-47 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 22-25, 38, 40 and 41 of copending application Serial No. 09/682,921. Although the conflicting claims are not identical, they are not patentably distinct from each other because Official Notice is given that it was widely known in the art at the time of the invention to add fillers to macromolecular materials in order to increase strength or to increase rigidity or to reduce cost; therefore it would have been obvious to a practitioner having ordinary skill in the art at the time of the invention to add fillers to the composition of the '921 application in order to extend these benefits absent any showing of surprising or unexpected results.

This is a *provisional* obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Any inquiry concerning this communication should be directed to Jeffrey Mullis at telephone number (703) 308-2820.

J. Mullis:cdc

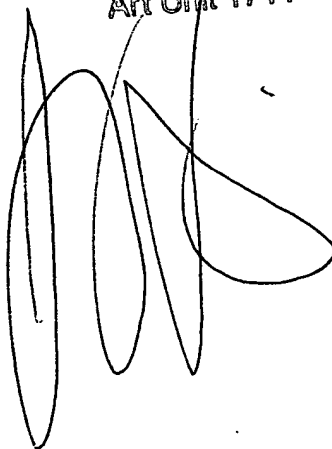
Serial No. 09/682,920

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January 12, 2003

Jeffrey Mullis
Primary Examiner
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A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned below the printed name and title.